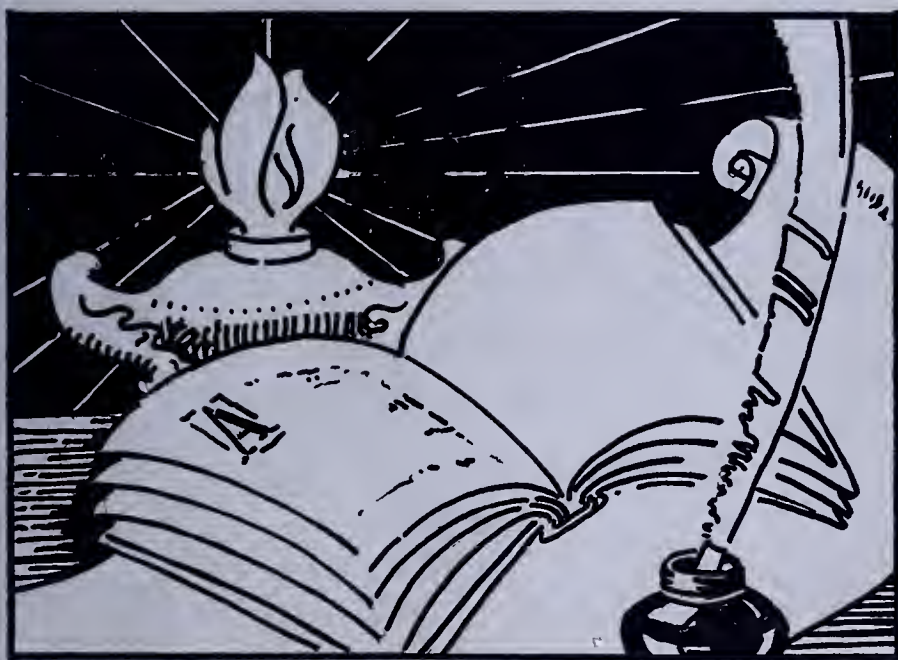


BASIC PROVISIONS AND PRINCIPLES OF THE SCHOOL LAWS OF PENNSYLVANIA

Bulletin No. 66

LESTER K. ADE

Superintendent of Public Instruction



**Commonwealth of Pennsylvania
Department of Public Instruction
Harrisburg
1938**

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FOREWORD

Officials and employes of the public schools have frequently expressed the opinion that a condensed summarization of the basic principles and provisions of the School Laws of this Commonwealth would serve a very useful purpose.

The biennial edition of the School Laws is, of course, the logical volume to use when seeking the statutory details regarding any question pertaining to school law. In many instances, however, the reader is not interested in the details, but prefers to have instead a brief expository statement of the general provisions or principles of law covering in general, topics such as the classification of school districts, the method of distributing school subsidies, the provisions governing required attendance, and the like. It is hoped that this bulletin will serve such readers properly and satisfactorily.

It will be noted that the material is presented under two major classifications, Basic Principles and Basic Provisions. The Basic Provisions are summarizations of statutory regulations. The Basic Principles are general principles enunciated by the courts in their interpretations of the statutes and the common law pertaining to public education.

There has been no effort to cover all principles or provisions or to classify them in the order of their importance. Probably the first release of this material will bring to the Department of Public Instruction many constructive criticisms and suggestions, with the aid of which subsequent revisions can be made even more helpful.

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Superintendent of Public Instruction

October 1938

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BASIC PROVISIONS AND PRINCIPLES OF THE SCHOOL LAWS OF PENNSYLVANIA

PROVISIONS OF SCHOOL LAWS

I STATUTORY BACKGROUNDS

A. Fundamental Constitutional Provisions

The Pennsylvania Constitution of 1874 contains the following important provisions:

1. "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of the Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose". (Article X, Section 1)
2. "No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school". (Article X, Section 2)
3. "Women twenty-one years of age and upwards, shall be eligible to any office of control or management under the school laws of this State". (Article X, Section 3)
4. "No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than Normal Schools established by law for the professional preparation of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House". (Article III, Section 17.)
5. "The Legislature shall have power to classify counties, cities, boroughs, school districts, and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution; but counties shall not be divided into more than eight classes, cities into not more than seven classes, school districts into not more than five classes, and boroughs into not more than three classes". (Article III, Section 34; Amendment of November 6, 1923)

B. History of Present School Law

1. Pennsylvania's common school system as it exists today was not established until many years after the Revolution, although the Constitution of 1776, 1790, and 1838, and the early acts of the General Assembly recognized its vitally important part in our progress and welfare.

After the famous crusade for education by Thaddeus Stevens and Governor Wolf, our schools as a State institution became an integral part of our governmental system. The Constitution of 1874 fortified it and directed the legislators to maintain "a thorough and efficient system of public schools". (Article X, Section 1)

The school system, or the school districts, then, are but agencies of the State Legislature to administer this constitutional duty. As such agencies, they do not possess the governmental attributes of municipalities. They are not municipal corporations; not having legislative powers. They have been held to be bodies of a lower grade, with less powers than cities, fewer of the characteristics of private corporations, and more of the characteristics of mere agencies of the State. They possess only the administrative powers that are expressly granted by the central government or inferred by necessary implications. (*Wilson vs. School District of Philadelphia*, 195 Atlantic 90. Pa.)

2. The Act of 1834, April 1, P. L. 170 (now repealed) is the original school law of the Commonwealth of Pennsylvania. It provided for the establishment of a general system of education by common schools. The secretary of the Commonwealth was designated as superintendent of all of the public schools established by this Act. Broad provisions were contained therein for the election of school directors in each district and a system for levying and collecting taxes. Each school district was required to provide through taxation an amount of money to support its schools, not less than double the amount furnished to the school district by the Commonwealth. Seventy-five thousand dollars was appropriated by the Legislature to the school fund. This appropriation is interesting in its contrast to the appropriation for the present biennium amounting to approximately \$80,000,000.
3. The Act of 1911, May 18, P. L. 309, called the "School Code" as amended, is the existing school law. This legislation was

developed after years of study by a commission of prominent citizens of this Commonwealth. Following prolonged consideration, it passed two Legislatures before final approval by the Governor, on May 18, 1911. Shortly thereafter its constitutionality was established in the case of *Minsinger vs. Rau*, 84A, 902, 236 Pa. 327.

II PHYSICAL STRUCTURE OF THE PUBLIC SCHOOL SYSTEM

A. Boundaries of School Districts

Generally each city, incorporated town, borough or township constitutes a separate school district, except:

1. Independent school districts, the creation of which may disregard boundary lines of political subdivisions of the Commonwealth. This type of district is established by petition of a majority of the taxable inhabitants of any contiguous territory to the Court of Common Pleas with the approval of the Court and in certain cases, with the additional approval of the Superintendent of Public Instruction. (Section 117)
2. The creation of a union school district is established by petition of two or more school districts to the county commissioners, which body shall not act upon the same until approval of the Superintendent of Public Instruction is obtained. Upon the approval of such petition the question of formation of union districts is submitted to the electors of the respective districts. (Section 127)
3. Merged school districts are provided for by the Act of May 13, 1937, P. L. 605. These districts are established for the purpose of creating more efficient physical structure. There are two types of merged school districts:
 - a. School districts which employed no teachers prior to January 1, 1937, for school year 1936-1937. These were required to be merged with other school districts by July 1, 1938.
 - b. School districts which employed ten teachers or less prior to January 1, 1937 for the school year 1936-1937. These are required to merge with other districts on and after July 1, 1941, upon the consent of the electors of the district.

B. Classes of School Districts

1. School districts of this Commonwealth are divided into classes according to population.
 - a. First Class.....500,000 or more
 - b. Second Class....30,000 or more, but less than 500,000
 - c. Third Class.....5,000 or more, but less than 30,000
 - d. Fourth Class.....Less than 5,000
2. In districts of the first class, and in independent school districts, board of school directors are appointed by the Court of Common Pleas. The membership of the board numbers fifteen in districts of the first class. (Section 202). In independent districts the members of the board are appointed by the Court, the number depending upon the class of district. In districts of the second class, nine members comprise the board of school directors; in districts of the third class, seven; and in districts of the fourth class, five. All school directors of this Commonwealth are elected or appointed for a term of six years. The term of membership of the several directors of the board of school directors is staggered so that at each election or appointment of new members there remain on the board members whose terms have not expired.

III ADMINISTRATIVE STRUCTURE OF THE PUBLIC SCHOOL SYSTEM

A. Powers and Duties of the Legislature

1. Article X, Section 1, of the Constitution of 1874, charges the General Assembly with the duty of maintaining and supporting a thorough and efficient system of public schools. Therefore, our public school system is a creature of Legislative and Judicial expression. Those charged by the General Assembly with the administration of the school laws have only such powers as are expressly granted or necessarily implied from expressed powers. (For Limitation of Legislative Power see I-A)
2. The Superintendent of Public Instruction is the chief executive officer of the Department of Public Instruction. He is charged with the exercise of all the powers and duties prescribed by law. He is appointed by the Governor, by and with the advice and consent of two-thirds of all the members

of the Senate. His term of office is for four years. Some of the important duties and functions of the Superintendent of Public Instruction are as follows:

- a. To give advice, explanation, and construction of information to the officers of the various school districts, and to citizens therein, relative to school laws, the duties of school officers, the rights and duties of parents, guardians, pupils and all others, the management of schools, and all other questions and matters calculated to promote the cause of education. (Section 1006).
- b. To investigate and audit the finances of the various school districts. (Sections 1019 and 1020).
- c. To remove county superintendents in certain cases. (Section 1119).
- d. To appoint and remove assistant county superintendents in certain cases. (Sections 1127 and 1129).
- e. To provide a general course of study for the schools of the Commonwealth. (Section 1608).
- f. To enforce the compulsory attendance law of the State. (Act of May 13, 1915 P. L. 286, Section 20, as amended by Act of July 19, 1935 P. L. 1335).
- g. To classify secondary schools of the State. (Section 1007). (As to the limitation of his powers to classify secondary schools, see *Falls Creek Boro School District vs. Washington Township School District*, 114 Pennsylvania Superior Court 380)
- h. To settle disputes and controversies that may arise in certain cases.

B. Powers and Duties of District Boards of School Directors

1. Boards of School Directors of the various districts of this Commonwealth are charged with the detailed administration of the schools of their respective districts. It is their duty to supply the necessary school plant, equipment, and supervisory and teaching staff. They are vested with large discretionary powers in those matters within the limitations provided in the School Code. (For the detailed powers and duties of boards of school directors see Article IV of the School Code, Act of May 18, 1911, P. L. 309.)

School directors receive no pay for their services and are specifically prohibited from receiving compensation by Sections 224 and 226 of the School Code.

C. The Supervisory Staff of the Public Schools of this Commonwealth are as follows:

1. County Superintendents

Every four years in each county in this Commonwealth, except Philadelphia, there is elected a county superintendent of schools whose qualifications are such that enable him to efficiently perform the supervisory duties with which he is charged. (Section 1104). The number of assistants to which he is entitled depends upon the number of teachers under his supervision. The county superintendent has supervision over the schools of all the districts within the county except those districts under the supervision of district superintendents.

2. District Superintendents.

District Superintendents must be elected by every district of the first and second class; and in each district of the third class, they may be elected by a majority vote of all members of the board of school directors of such school district. The directors of any school district required, or electing to have a district superintendent of schools, may not participate in the election of a county superintendent, and any district which has a district superintendent shall not be subject to the supervision of a county or assistant county superintendent. (Section 1133).

3. General Supervisory Staff

In addition to county and district superintendents, boards of school directors in each district may appoint supervising principals, school nurses, medical inspectors, and supervisors of individual subjects, or of special education. These employes, comprising the supervisory staff of the district, must have certain requisite qualifications in order to be eligible for appointment.

D. Employes

Boards of School Directors are required and authorized to provide the necessary teachers, supervisors, and employes to keep the public schools in operation.

1. Professional Employees

Professional employees having the proper qualifications are now given the protection of tenure. (Article XII of the School Laws, as amended by Act 52, approved April 6, 1937). Professional employees employed under the provisions of this Act may not be dismissed except for certain specified causes, and the written contract which the district is required to execute with its professional employees is a continuing one from year to year. The term "Professional Employees" includes the following:

Teachers, supervisors, supervising principals, principals, directors of vocational education, dental hygienists, visiting teachers, school secretaries, the selection of whom is on the basis of merit as determined by eligibility lists, school nurses who are certified as teachers, and any regular full-time employe of a school district who is duly certified as a teacher. (Section 1201)

The violation of the mandatory provision of Section 1205 of the School Laws, requiring that all contracts with professional employees must be in writing, may be grounds for ouster of the board of school directors. (Directors of Township of Plymouth, 24 Luzerne, 462; Blythe Township School Directors Removal, 26 Schuylkill 249 and 336.)

The appointment of a professional employe is invalid unless the appointment is confirmed by a majority of the school board, the affirmative and negative votes of each member recorded, and a proper written contract by both of the contracting parties executed. (Ickes vs. Costlow, 127 Pa. Superior Court 180, 193 A. 287, Clessner vs. School District 8, Som. 361.)

2. Other Employees

Other employees who do not come within the class of professional employees may be dismissed at any time upon cause being shown and hearing held. (Coll. vs. Plymouth Township School District, 27 Luzerne 36).

The liability of a district in dismissing an employe without cause depends upon the terms of the contract entered into between the board and the employe. (McCade vs. School District 31, Luzerne 297).

3. Officers of a School District

A vital distinction exists between officers and employes, or other appointees of a school district, in so far as the powers of a board to dismiss them is concerned. Section 406 provides:

“The board of school directors in any school district in this Commonwealth, except as herein otherwise provided, shall, after due notice, giving the reasons therefor, and after hearing if demanded, have the right, any time, to remove any of its officers, employes, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.”

But it has been held that this Section does not apply to public officers within the meaning of Article VI, Section 4, of the Pennsylvania Constitution, which provides that “appointed officers—may be removed at the pleasure of the power by which they have been appointed.” Officers within this clause of the constitution, which are removable at the pleasure of the board, without a hearing, include the secretary of the board. (*Howell vs. Keller* 23 Luz. 73); the treasurer (*Muir vs. Madden* 286 Pennsylvania 233); and the president (*Com. Ex Rel. vs. Keil et al* 64 Pitts. L. J. 827). Employes held not to be officers, and therefore entitled to a hearing and dismissal only after cause shown, include medical inspectors. (*Thomas vs. School District* 30 Luz. 463); school nurse (*McCade vs. School District* 31 Luz. 297); and district superintendents (*Weiss vs. Zeigler*, 327 Pennsylvania 100).

E. County Board of School Directors

By the provision of Act 157, approved May 13, 1937, P. L. 605, there is created in each county under the supervision of a county superintendent, a county board of school directors elected from the members of the school directors association of each county. Membership of this board numbers five, and the term of each member is for six years. Their terms of office are staggered. The county superintendent is ex-officio chief executive officer of this board and of its committees, without the right to vote. The board is required to hold at least ten meetings annually. Each member receives for his expenses entailed by attendance at these meetings, \$60.00 per annum, which money is paid by appropriations made for

said purpose by the General Assembly, or from appropriations for the public schools. Their powers and duties, which in the main are of an advisory nature, are outlined in Section 814 of the School Code. In general, these powers and duties relate to the merging of school districts, transportation of pupils, and the financial, administrative, and attendance area problems of the county as a whole.

F. The Department of Public Instruction

The Department of Public Instruction, by the provision of the Administrative Code, is charged with the administration of all the laws of the Commonwealth with regard to the establishment, maintenance, and conduct of public schools of this Commonwealth. Among the administrative duties of the department contained in Article XIII, Section 1302 of the Administrative Code, are the following: Classification of secondary schools, issuance of commissions to superintendents and assistant superintendents of schools, prescription of minimum courses of study for the public schools, prescription of requirements for, and the issuance of, teachers certificates, and the power to condemn as unfit for use school buildings or school sites.

G. The State Council of Education

The State Council of Education is an administrative board of the Department of Public Instruction, charged with certain powers and duties relating to the formation of policies pertaining to the administration of the educational system of this Commonwealth. One of its important duties is to report and recommend to the Governor and General Assembly legislation needed to make the public schools more efficient and useful. (Act 144 approved June 1, 1931 amending the Administrative Code of 1929.)

The membership of this body consists of the Superintendent of Public Instruction who is its president and chief executive officer, and nine other members. All appointments are made by the Governor for a term of six years. This body is vested with authority to advise and inspect, adopt standards for, and require reports, financial or otherwise, from schools and institutions wholly or partly supported by the State, which are not supervised by the public school authorities, including schools and institutions for the blind, the deaf, and the dumb; to make recommendations to the Governor and the General Assembly of the amount of appropriations to be made to, or for the use of, any such school or institution; and to supervise the expenditure thereof.

IV FINANCIAL STRUCTURE OF SCHOOL DISTRICTS

A. Levy of Taxes

Boards of school directors of all school districts of this Commonwealth are empowered and directed to levy and assess taxes in their respective districts for the purpose of supporting the public schools (Sections 524, 537).

In districts of the first class, the School Code of 1911, as amended by the Act of June 21, 1919 P. L. 556, provides that the board shall levy an annual tax of not less than six mills, and may levy a tax not to exceed eight mills, plus one-half mill for funding of bonded indebtedness. (*Wilson vs. School District of Philadelphia*, 195 Atlantic 90.)

In districts of the second class, school tax shall not exceed twenty mills on the dollar, and in school districts of the third and fourth classes, taxes shall not exceed twenty-five mills on the dollar, provided that in each school district of the second, third, and fourth classes, boards of school directors are authorized and directed to levy annually a tax on each dollar of the total assessment of all property assessed and certified for taxation therein, to pay the minimum salaries and increments of the teaching and supervisory staff. Such tax shall not be invalidated or affected by reason of the fact that it may increase the total annual millage fixed or limited by law; Provided, that in districts of the fourth class, the tax herein authorized, together with all other school taxes levied in the district, shall not exceed thirty-five (35) mills on each dollar of the assessed valuation.

B. Collection of Taxes

The School Laws contain, in general, provisions for the election of tax collectors, and the evident intention of the Legislature was to leave undisturbed the method of collecting taxes in force at the time of their adoption. (*Black vs. Tobin*, 239 Pa. 105.) Generally speaking, the collector of taxes for the borough, township, or municipality is the collector of school taxes. The collector of school taxes is furnished with duplicates stating the amount of school taxes to be collected (Section 548), and is also given a warrant under the seal of the district authorizing him to collect said taxes. (Section 549.) Before a tax collector may enter upon his duties he must furnish a bond to the district in such amount as is determined by the board of school directors. (Section 550.)

By the provisions of the Act of June 5, 1937 P. L. 1736, amending the first class township Act, the requirement of bonds of township treasurers, who also act as collectors of school taxes is limited to a fidelity bond. In districts of the second class, by the provisions of Section 550, school directors may accept a fidelity bond. Upon failure of any person elected or appointed as a tax collector to furnish a proper bond within fifteen days after his appointment, and upon notice so to do, the board of school directors may appoint another suitable person as tax collector in his place, who shall qualify in like manner as the collector originally appointed or elected.

The general remedies of the tax collectors for the collection of delinquent taxes are, (1) Exercise of power of distraint upon the personal property of the taxable who has failed to pay delinquent taxes. (2) By returning unpaid delinquent taxes on real estate to the county commissioners, which taxes shall be a lien upon the real estate of the taxable. (3) By a suit in assumpsit before any justice of the peace or alderman, obtaining judgment and issuing execution thereon. In the collection of per capita taxes, the tax collector may request payment from the employer of the taxable who may deduct said taxes from the wages of the employe. Failure of the employer to deduct per capita taxes after notice to do so is subject to an action in assumpsit for collection of said taxes and costs. By the provisions of the act of April 21, 1937, P. L. 316. Any employe of any political sub-division of this Commonwealth, who is delinquent in the payment of his taxes, may be compelled to pay same through a deduction in his wages, which sum shall be paid by the treasurer of the political sub-division, upon request of the tax collector.

Former provisions in the laws of Pennsylvania for imprisonment for failure to pay delinquent taxes were abolished by the Act of April 25, 1935, P. L. 81.

C. Budgets

Boards of school directors of districts of the first class, (Section 532), and boards of school directors in school districts of all other classes (Section 563), shall prepare budgets; and expenditures shall be made in accordance with said budgets; subject to certain emergencies and exceptions. The total amount of the estimate for the budget should not exceed the amount of funds, including the proposed annual tax levy and State appropriation available for school purposes in the district.

D. State Appropriations to School Districts

School districts of this Commonwealth are provided with funds for the operation of the schools therein through appropriations made by the General Assembly, and distributed through the Department of Public Instruction.

1. Reimbursements to School Districts

It is a function of the Department of Public Instruction to determine the annual allotment of appropriations that are paid to all school districts of Pennsylvania, and to draw requisitions, verify, and mail the checks for the semi-annual payments of the same to all school districts. These allotments, deductions, and payments are made according to the following mandatory provisions, specified in the School Laws of Pennsylvania.

a. **Section 1210 Paragraph 19, 20, 21, and 23**

Reimbursement for teachers salaries. This operation involves the consideration of many factors for each of the 63,000 teachers employed in the 2,578 school districts of Pennsylvania.

b. **Section 1210, Paragraph 19**

Reimbursement paid to 1,282 school districts for 5,050 closed schools for the school year, 1936-1937.

c. **Sections 3701-3705, 1406, 1418**

Reimbursement paid to over 1,350 school districts, for the transportation of 65,000 school pupils, for the school year, 1936-1937.

d. **Section 1711-A, 1931**

Reimbursement paid to 525 school districts for the tuition of secondary school pupils, for the school year, 1936-1937.

e. **Sections 3401-3435**

Appropriation for vocational education.

f. **Sections 2302-2311**

General provisions regarding distribution of appropriations.

g. **Sections 1121, 1130, 1412, and 1413.**

Deductions to be made semi-annually for appropriations to the respective school districts.

h. Section 1210, Paragraph 19

Ascertainment of data for the determination of the rate of reimbursement of each of the school districts for each biennium, according to the provisions of Sections 101 and 109. Determination of required amount of appropriation on the basis of the application of the provisions of the school laws to the reports and applications submitted by the 2,578 school districts for the preparation of the budget for the determination of the amount of appropriation to be asked of each General Assembly for the reimbursement to be paid to school districts.

i. Sections 1210, Sub-Section 19, and Section 1406

Reimbursement to school districts for the payment of teachers' salaries and for payment of costs of transportation is based upon the classification of the district for reimbursement purposes according to the true valuation of assessable property of the district per teacher. The true valuation per teacher for each district is determined by the State Council of Education, on data and material submitted by officers of each district in their annual report to the Superintendent of Public Instruction, if such data and material shall, after investigation by the State Council of Education, be found correct; otherwise, upon such data and material as modified, corrected, and approved by said Council of Education. The true valuation per teacher is found by dividing the true valuation of the assessable property of the district by the number of full-time teachers, principals, supervisors, and superintendents employed in the schools of the district for the year covered by such report. The true valuation of the taxable property of each school district is obtained by dividing the amount of the assessed valuation, certified in the annual report of the district at the end of every even-numbered school year, subject to investigation and correction by the State Council of Education, by the average rate of assessment certified in such annual reports for the three years immediately preceding the day in which such true valuation is determined as corrected and approved by the State Council of Education.

j. **Section 1210, Paragraph 22**

Preparation of itemized statements and information, in detail, regarding amounts payable to each school district for certification of the same to the Auditor General and the State Treasurer. The applications for appropriation for teachers salaries, extension education, special education, and for closed schools are received from each school district as of November first of each year. After the certification of teachers has been checked by the teacher division, allotments of appropriation are made in detail to each district, for reimbursement for teachers salary and for closed schools. The applications for appropriation with detailed statements of appropriations are then forwarded to the Auditor General's Department for audit and to the State Treasurer for Approval. When the Auditor General's Department and the State Treasurer concur with the amounts of each annual allotment of State appropriation as computed by the Department of Public Instruction, the applications are returned to the Department of Public Instruction to determine the net amount of the semi-annual payment to each district. After all deductions have been determined, statements are compiled showing allotments, deductions, and net amount due each district. These statements are forwarded to the Auditor General for audit and to the State Treasurer for approval.

When the Auditor General and State Treasurer concur in the net amount due, the statements are returned to the Department of Public Instruction, for requisition. Requisitions are drawn, and if the amounts are approved by the above mentioned Departments they are sent to the disbursement division of the State Treasury, where the checks are written and given to the Department of Public Instruction to be verified and mailed to the treasurer of each school district.

k. **Section 1210, Paragraph 21**

Preparation of a biennial appropriation budget immediately preceding the beginning of each biennium. The maximum amount of appropriation to be applied to each of the respective school districts during the fol-

lowing biennium must be determined for presentation to the General Assembly. The amount of money to be asked of the General Assembly must be accurately determined by districts for reimbursement for teachers' salaries, extension education, special education, closed schools, tuition for secondary school pupils, and for the transportation of pupils.

E. Indebtedness of School Districts

1. Bonded Indebtedness

School districts are authorized to issue bonds for certain limited purposes. In school districts of the first class, bonded indebtedness shall not exceed two per cent of the last assessed valuation of the taxable property for school purposes therein. In school districts of the second, third, and fourth classes, the bonded indebtedness shall not exceed seven per cent.

The Act of July 2, 1937, P. L. 2860, provides, in part, that bonds may be issued to refund taxes decreed by an order of court; defines the method of calculating the net indebtedness of a school district, and further provides that any temporary indebtedness incurred prior to July 1, 1937, may be funded through an issue of bonds; that the length of term of bond issues shall be reduced to twenty-five years; that all bonds issued in the future shall be serial bonds, with payments beginning on same within three years, and with payments thereafter, in approximately equal annual instalments; that any amount of an old bond issue maturing in any year in excess of five per centum of the original amount of the bond issue may be refunded over a period of ten years; then the Superintendent of Public Instruction shall require, in the annual report, a statement of the amount of bonds, or other obligations, maturing each year and the payments on same and may, in certain cases, withhold the State appropriation when debts of school districts are not paid at the time of maturity; that a sinking fund shall be provided for each bond issue; that a temporary debt may be incurred in anticipation of proceeds of a bond issue already authorized; that the amount of temporary indebtedness incurred for current expenses and debt service shall be limited to the amount of any unpaid State appropriation and the taxes due and unpaid for the fiscal year, and any such temporary indebtedness

outstanding at the end of the fiscal year shall become an obligation on the budget of the following year, and such debt shall be paid in full by July 1, in school districts of the first class, and by November 1, in school districts of the second, third, and fourth classes, of the following fiscal year; that any temporary indebtedness existing prior to July 1, 1937, may be paid within a period of three years; that the length of term of temporary loans for permanent improvements shall be extended to the three years; that in case of an emergency, additional temporary loans may be incurred with the approval of the Superintendent of Public Instruction, and that payroll obligations shall be preferential claims on the current expense budget.

F. Administration of State Appropriations

Appropriations made by the General Assembly for the benefit of school districts are made to the Department of Public Instruction, and through that Department are paid to the several school districts. The Department is vested with the power of administering the distribution of these appropriations and empowered to withhold appropriations where districts have not complied with the school law. (See IV-C)

V OTHER VITAL PROVISIONS

A. Children Entitled to School Privileges

Any child between the ages of six and twenty-one, being a resident of the district is entitled to school privileges.

B. A Child is Considered a Resident of the District in which:

1. His parents or the guardian of his person resides.
2. He is kept gratis in the home of any resident of the school district, provided affidavit can be furnished.
3. He, if a non-resident, is placed in the home of a resident of the school district by order of court, or by arrangement with any association, agency, or institution.

Neglected and dependent children residing outside a school district need not be accepted by school districts if such acceptance would involve additional provisions for transportation, or would require the district to provide additional teachers, or rooms, at an expense greater than the amount

of reimbursement paid to the district by the State. (Section 1402.)

C. Authority of Teachers Over Pupils

1. Teachers are given a parental authority over pupils during the time the pupils are in attendance in school, and during the time required in going to and from their homes. (Section 1410.)
2. In the exercise of this parental authority the teacher may inflict corporal punishment, but such punishment may not be cruel, unreasonable, excessive, or malicious. (*Harris vs. Galilley*, 125 Pa. Superior Court 505.)

D. Tort Liability of School Districts

School districts, as agents of the General Assembly, are held entitled to the "Sovereign Immunity", and are not liable for the torts of their officers, agents, servants, or employes, although this doctrine has been criticised by one of our lower courts in the case of *Goldstein et al. vs. School District of Philadelphia* (C. P. No. 5 of Philadelphia County, Special term 1936, No. 387), decided on November 10, 1937. The court felt bound to follow the decisions of our Supreme Court in many cases on this subject, and held that the school district was not liable for injury sustained in consequence of its agents' negligence. *Ford vs. Kendall Borough School District* 121 Pa. 543.)

E. Discretionary Powers of Boards of School Directors

Boards of school directors are vested with broad discretionary powers to carry out the duties imposed upon them by law. Their judgment, even though unwise, if exercised honestly and in good faith, will not be grounds for punitive action. (*Memmert vs. Ziengiefus*, 23 Northampton 385.)

If, however, school directors disregard the mandatory provisions of the school law, they may be removed from office. (*Coal Township School District* 290 Pennsylvania 200; *Chester School District Audit* 301 Pennsylvania 203.) It has been held, however, that although injury may result from the failure of a member of a board of school directors to perform a statutory duty, nevertheless such director is not individually responsible for such injury. (*Gerstner vs. Ayers et al.* 74 Pitts. L. G. 427, 20 Northampton 213.)

F. Sectarian Invasion of Public Schools

It is provided that "no money raised for the support of public schools of the Commonwealth, shall be appropriated to, or used for the support of any sectarian school. "Under this Section of the Constitution it was held that public school money may not be used for religious or sectarian purposes. (*Hysong vs. School District 164 Pa. 629*, *Bender vs. School District 182 Pennsylvania 251.*) (Section 2, Article 10, of the Constitution of Pennsylvania.)

Section 2801 of The School Laws, provides: No religious or political test or qualification shall be required of any director, visitor, superintendent, teacher, or other officer, appointee, or employe in the public schools of this Commonwealth.

No teacher in any public school of this Commonwealth shall wear, in said school, or whilst engaged in the performance of his or her duty as such teacher, any dress, mark, emblem, or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect, or denomination. (Act of June 27, 1895, Section 1, P. L. 395.)

G. Compulsory Attendance

By the provisions of Section 1414 of The School Laws the compulsory school age is defined as "The period of a child's life from the time the child's parents elect to have the said child enter school, which shall be not later than at the age of eight years, until the age of seventeen years, during the school year 1938-1939, and thereafter until the age of eighteen years: Provided, That any child past sixteen years of age who holds a certificate of graduation from a regularly accredited senior high school, or any child who, prior to the effective date of this Act, has left school and is regularly employed, shall not be subject to the provisions of this Act."

The exceptions to the Compulsory Attendance Act are:

1. Satisfactory evidence furnished to the school board that the pupil is prevented from attendance at school on account of any mental, physical, or any other urgent reason. (For the construction of the phrase "Urgent Reasons" see *Commonwealth vs. Mufford 23, Luzerne 317.*)
2. Any child between the ages of sixteen or eighteen years regularly engaged in any useful or lawful employment who holds an employment certificate issued according to law.

3. Any child examined by an approved psychologist or mental clinic, who, after being examined has been found unable to profit from further school attendance, and who has been reported to the board of school directors and been excused.
4. Any child between the ages of fifteen and eighteen years engaged in farm work or domestic services in a private home on a permit issued by the school board. (Sections 1415 and 1416.)
5. If there is no public school in session within two miles from the nearest point on the public highway nearest to the residence of any child and proper free transportation is not furnished to and from school. (Section 1418.) By the provision of the 1937 Amendment to Section 1418, however, after July 1, 1939, districts of the fourth class are required to furnish free transportation to all of their pupils to and from school, from and to a point on the public highway not more than two miles distant from the residence of each child.

Unless otherwise directed by the board of school directors, the admission of beginners to the public schools shall be confined to the first two weeks of the annual school term. Beginners becoming six years of age after the beginning of the school term and before the first day of February of any year, shall be admitted during the first two weeks of the annual school term. The board of school directors may fix additional periods of admission of beginners as it may determine. (Section 1403.) In the light of Sections 1403 and 1414, the board of school directors may admit in its discretion children who will not become six years of age prior to the first day of February of any year.

H. Certification of Teachers

1. Boards of school directors are empowered to employ only those teachers who have been certified in accordance with rules and regulations prescribed by the State Council of Education. (Section 401.)
2. In determining the amount of reimbursement to school districts for teachers' salaries, such reimbursement takes into consideration the certificates of the teachers filed with the Superintendent of Public Instruction. (Section 1210, Sub-Section 19.)

3. Every teacher in the schools of this Commonwealth must hold a certificate to teach. These certificates are of three types.
 - (1) College Certificate
 - (2) Standard Certificate
 - (3) Emergency Certificate (Article XIII of The School Laws)
4. These certificates may be annulled for cruelty, negligence, immorality, or intemperance after a hearing of which reasonable notice in writing is given to the party interested. (Section 1322.) (Detailed provisions for the legislation and certification for persons qualified to teach in the elementary and secondary schools of this Commonwealth are found in the provisions of the Act of May 29, 1931, P. L. 210.)

I. Vocational Education

Under the provisions of the Smith-Hughes Act (Public No. 347—64th Congress—Approved, February 23, 1917), and the George-Deen act (74th Congress—June 8, 1936), through legislative appropriation and by virtue of acceptance acts, Pennsylvania is enabled to avail herself of subsidies in excess of State reimbursement for general education teachers.

These legislative appropriations are made available through Act 477, approved July 1, 1937 P. L. 2548, amending previous vocational education acts, defining vocational education and providing for the establishment and regulation of vocational schools, for state-aid, payment of tuition, and reimbursement thereof by the State. Under this Act, public and other service occupations, and distribution of manufactured and raw materials are included in the types of vocational education subsidized. Contingent upon the availability of funds, it provides for an increase in reimbursement of school districts over the previous amount.

Act 489, approved July 1, 1937, P. L. 2603, makes possible the establishment of vocational schools and classes in the area under the jurisdiction of the county school superintendent, if agreed to by referendum, and gives the county board of school directors jurisdiction over this area. The board of school directors of vocational schools shall have power to levy taxes that are to be collected by the local tax collector.

Through Act 315, approved June 2, 1937 P. L. 1223, classes for fitting unemployed, out-of-school youth, over sixteen years of age, for employment, were made possible during the 1937-1939 biennium, continuing similar opportunities provided during the 1935-1937 biennium.

PRINCIPLES OF SCHOOL LAWS

Our courts have formulated a theory of education based upon what they deem to be fundamental principles of public policy.

I THE SCHOOL AND THE STATE

A. The theory of the law is that education is the function of the State. Therefore, boards of school directors are held to be agents of the State, such officers or agents being selected in any manner provided by the Legislature. The Acts of Assembly and the rulings by the courts to this effect have been held not to be unconstitutional.

"The Constitution of Pennsylvania, by Article X, Section 1, not only recognizes that the cause of education is one of the distinct obligations of the State, but makes it an indispensable governmental function." *TEACHERS' TENURE ACT CASES*, 329 Pa. 213, 223. See also, *WILSON et ux v. PHILADELPHIA SCHOOL DISTRICT et al.*, 328 Pa. 225, 195 A. 90.

B. It is generally held that public schools are maintained not to provide means of great personal advance to pupils but as governmental means of protecting the State from consequence of an ignorant and incompetent citizenship.

"Education is regarded today as one of the bulwarks of democratic government. Democracy depends for its very existence upon the underlying intelligence of its citizens and electors." *TEACHERS' TENURE ACT CASES*, 329 Pa. 213, 224. See also, *WILSON et ux v. PHILADELPHIA SCHOOL DISTRICT et al.*, 328 Pa. 225, 195 A. 90.

C. Courts have held that one object of the public school system is to prevent crime by educating the people and thus by securing a higher state of intelligence and morals—conserve peace, good order, and well being of society. The prevention of crime and preservation of good order and peace are the highest exercise of police power of the State whether done by punishing offenders or by educating the children.

D. As inherent powers and duties of the State, some courts in this country identify the maintenance of a system of public schools with the exercise of the police power of the State and with maintaining military forces or with the power to tax.

"The power of the State over education thus falls into that class of powers which are fundamental to our government. In

the abstract it is not an absolute essential to government as taxation, law enforcement, preservation of the peace are essential, but by the expressed provisions of the Constitution it ranks with them as an element necessary for the sustenance and preservation of our modern state." *TEACHERS' TENURE ACT CASES*, 329 Pa. 213, 223. See also, *WILSON et ux v. PHILADELPHIA SCHOOL DISTRICT et al*, 328 Pa. 225, 195 A. 90.

E. The State cannot exercise its police power to the extent of prohibiting private schools altogether. It cannot prohibit the teaching of well-recognized school subjects (German, for example) in private or parochial schools, since the state may not violate the 14th Amendment which declares, "No state . . . shall deprive any person of life, liberty or property without due process of law." The State may, however, prohibit the teaching of disloyalty, treason, pacifism, and all those things commonly held to be against public policy.

Nebraska Lutheran Synod v. McKelvie, 262 U. S. 404 (1923); *Bartels v. State of Iowa*, 191 Iowa 1060; *Bohning v. State of Ohio and Pohl v. State of Ohio*, 102 Ohio St. 474; guided by the decision in *Meyer v. Nebraska*, 262 U. S. 390. *Society of the Sisters of the Holy Names of Jesus and Mary v. Pierce*, Governor of Oregon, 296 F. 928.

F. The Supreme Court of the United States has stated that police power embraces every law which concerns the welfare of the whole people of the State or any individual within it. In other words, the police power is that power of the state to limit individual rights in the interest of the social group. Good sense and honest judgment of each generation furnish the real limit of the state's police power. Each age must judge and will judge what constitutes society welfare.

G. The Supreme Court having jurisdiction is the final judge as to whether a person has been deprived of liberty or property. Laws passed to protect life, health, and general welfare may be set aside as arbitrary and unreasonable (14th amendment) and education is no exception to the general rule. Obviously, therefore, the state educational policy is, in some measure, subject to control of the United States Supreme Court.

II DISTRICT ORGANIZATION AND CONTROL

A. For purposes of determining general powers and obligations school districts are unquestionably quasi-corporations.

“ . . . School districts . . . are made quasi-corporations for the sole purpose of the administration of the Commonwealth’s system of public education.” *FORD v. KENDAL BOROUGH SCHOOL DISTRICT*, 15 A. 812, 121 Pa. 543, 547.

B. An accepted principle of law is that legislative authority may not be delegated, but the Legislature may create administrative bodies and may vest them with broad discretion pertaining to administrative functions. The real question is in determining between judicial and administrative functions. *WILSON et ux v. PHILADELPHIA SCHOOL DISTRICT et al*, *Supra*.

C. An unconstitutional act ceases to be a law. It confers no rights, it imposes no duties, it creates no office. It is as inoperative as though it never had been passed.

D. The acts of a **de facto** school district, so far as third parties and the public are concerned, are as valid as the acts of a **de jure** district. This principle of law is founded upon fundamental considerations of public policy. Every consideration of public policy supports the principle that the acts of a **de facto** corporation are valid with respect to third parties and the public.

III SCHOOL DISTRICTS AND MUNICIPALITIES

A. Control over school property is to be exercised by the officers of the school district. In Pennsylvania no new school can be built unless the State Department of Education has approved of the plans and specifications for the same in accordance with standards set up by the State Council of Education.

B. If a board of school directors attempts to construct or maintain a building or fire escape which is dangerous to person or property the remedy lies not in invoking the police power, but in reporting the matter to the Department of Labor and Industry, and finally in action in equity for the abatement of a nuisance, if it becomes necessary to proceed thus far.

C. The Legislature may adopt any mode of financing the public schools not prohibited by the Constitution. Either the board of school directors or the Board of Education is within statutory limits given power to levy taxes and to exercise complete control over school finances in Pennsylvania.

“ . . . In *Minsinger v. Rau* (236 Pa. 327), *supra*, the delegation of taxing power under the Act of 1911 was challenged. We there held that the Legislature had the power to designate agencies for

the maintenance of the common school system, and had the power to confer on them the right to **collect a tax**. The opinion of the court in considering the question of delegation to an appointive board, stated that as the Legislature had fixed the maximum limit, there was no unlawful delegation of taxing power to an unrepresentative body. In a later case we said that was a legislative act. See *DUFF v. PERRY TOWNSHIP SCHOOL DISTRICT*, *supra* (281 Pa. 87), involving an elective board of the third district. It was contended, however, that a discretion existed in the board to choose between five and six mills. This was the first case to consider the limitation upon the Legislature in regard to delegating the power of taxation, and it was argued that it was a dangerous practice to confer upon a board, which the people had no power to choose, or over which their power is remote and indirect, the authority to tax.

“But in the Act of 1911 there was no real delegation of taxing power; the Legislature had, in effect, fixed the tax. We can not now hold the instant question was decided by this court in the *Minsinger* case. It was pointed out, however, that if an appointive board were given the power to levy a tax to meet its requirements, without legislative restriction, it would usurp the deliberative powers of the people. This consideration becomes intensely important in view of the holding there that ‘the school district is but an agency of the Commonwealth, and there is no inherent right in the electors of any particular community to vote for directors . . .’ That statement is correct.” *WILSON et ux v. PHILADELPHIA SCHOOL DISTRICT et al*, *supra* at page 233.

D. Even though boundaries of a school district may be coterminous with the boundaries of the city, or town, there must be no confusion of school district affairs with city affairs, or town affairs. They remain separate and distinct units of government for the purposes of exercising separate and distinct powers and for the accomplishment of separate and distinct purposes.

In the case of *LYON v. STROCK et al*, 274 Pa. 541 it was held that if a school district and a borough occupy the same territory, the borrowing capacity of the district is not to be determined by adding the debt of the borough to its own; but its own debt only is to be considered in the constitutional limit.

The court in that case said at page 543:

“If, therefore, the school district is to be regarded as a separate and distinct municipality, for the purpose of limiting its borrow-

ing capacity, then we are satisfied that there is to be applied to it this doctrine, held by the courts of many states, that its debts and the debts of another municipality occupying the same territory are to be regarded distributively and not collectively . . .

"The principle announced in the foregoing cases as to which we find no contradictory opinion anywhere, is thus put in Ruling Case Law, Vol. 19, Page 987: 'It sometimes happens that there are two governmental bodies exercising different public functions within precisely the same boundaries, as when the boundaries of a city are coincident with those of . . . a school district. In such cases, if each body is a distinct and independent corporation, its indebtedness should be reckoned separately, but, if one of the bodies is not a separate corporation but merely a board or department of the other, its indebtedness must be included as part of the indebtedness of the corporation.' We have been referred to no case in Pennsylvania where this question has been squarely decided and by diligent searching we have been unable to find any . . ." See also, 56 Corpus Juris 194, Section 47 et seq.

IV SCHOOL OFFICERS

A. Since school districts are, strictly speaking, quasi-corporations created for purposes of State administration, school officers are agents of the State. The question whether officers are municipal officers or agents of the State is properly determined by the functions they perform. The manner of election or appointment is of no consequence in this connection. The mere fact that a school officer is in some instances appointed by the court does not make him a municipal officer. In contemplation of law, the school board is entirely independent of the municipal authorities unless subjected to their jurisdiction by specific statutory enactment.

"School directors are officers whose duties are defined by law and should be held liable where they refuse or neglect to comply with the principal mandate of the statute." *IN RE SCHOOL DIRECTORS TOWNSHIP OF PLYMOUTH*, 24 Luz. 463, 468. See also, *COMMONWEALTH v. WILKINS T. & B.*, 75 Pa. Super. Ct. 305.

B. Eligibility to office clearly implies the qualification or capacity of the person to hold the office. The word eligible means capable of being chosen, subject to selection or choice.

"If the Act of 1859 had made him ineligible to appointment while holding office as a director, the appointment made in violation of the law would have conferred no authority and the judgment of ouster would result necessarily from such a state of facts." COMMONWEALTH *ex rel* RYAN *v.* HAESELER, 161 Pa. 92, 96. See also, THROOP BOROUGH SCHOOL DIRECTORS, 298 Pa. 453, 148 A. 518.

C. It is a well settled rule of the common law "that one who, while holding a public office, accepts another office incompatible with it, ipso facto and without further act resigns the first office." Surrender of first is implied by acceptance of second. DE TURK *v.* COMMONWEALTH 129 Pa. 151, 160.

V LEGAL AUTHORITY OF BOARDS OF EDUCATION

A. Acts *ultra vires*, or in excess of authority, bind neither the school district nor its officers. KREUSLER *v.* McKEES ROCKS SCHOOL DISTRICT Pa. 281, 100 A. 821.

B. School districts perform purely governmental or public duties. They have no inherent power. They have only power conferred upon them by statute.

"School districts are creatures of the statutes and only have such powers as are thereby given to them; they are 'corporations of lower grade and less power than a city, have less the characteristics of private corporations and more of a mere agent of the State; they are territorial divisions for the purposes of the school laws, and their officers have no power except by express statutory grant and necessary implication.' (Erie School District *v.* Fuess, 98 Pa. 600, 606.)" MULLIGAN *v.* SCHOOL DISTRICT 241 Pa. 204, 207.

C. School districts may exercise only three powers:

1. a. Those expressly granted by statute, b. Those fairly implied in powers expressly granted, and c. Those essential to the accomplishment of the object for which they are created. MULLIGAN *v.* SCHOOL DISTRICT, *supra*.

D. Control over practice school facilities for Teachers College students in Pennsylvania is defined by statute. The boards of Trustees of Teachers Colleges may enter into contracts with boards of School Directors making such arrangements as are mutually agreeable, but such agreements must be approved by the State Superintendent of Public Instruction. (See Sec. 2004 of School Laws.)

E. As a general rule duties vested in boards calling for the exercise of judgment and discretion are not delegable. The performance of ministerial or administrative duties may be delegated by the board to their agents.

VI CONTRACTUAL AUTHORITY AND LIABILITY OF SCHOOL BOARDS

A. Under common law, there are five essential elements common to all simple contracts and these cannot be ignored by boards of education. The common requisites are (1) legal capacity of contracting parties, (2) mutual assent—meeting of the minds, (3) valid consideration, (4) rights and liabilities sufficiently definite to be enforceable, (5) an agreement not prohibited by statutory or by common law. A sixth must be followed by boards of education—(6) within scope of authority.

B. No inherent power to contract is vested in such quasi-corporations as school districts. Being arms of the State, created for purpose of exercising purely governmental function, the measure of their contractual power is found in the laws of the State and in them alone. *MULLIGAN v. SCHOOL DISTRICT*, *supra*; *KREUSLER v. SCHOOL DISTRICT*, *supra*.

C. Contracts clearly ultra vires, or prohibited by statute, or contrary to public policy are commonly held to be void.

VII THE SCHOOL MONEY

A. The power of taxation, altogether legislative and in no degree judicial, is committed to the school districts. If the districts refuse to perform their duties the court can compel them. If they transcend their powers the courts can restrain them. But if they exercise the unquestionable powers unwisely there is no judicial remedy.

WILSON v. SCHOOL DISTRICT OF PHILADELPHIA, *supra* at page 239; *BERGER et al v. WEST HAZLETON et al*, 28.

B. For purposes of taxation property may be classified as (1) real property, (2) tangible personal property, and (3) intangible personal property. Real property is taxable in the State or taxing district in which it is located whether the owner be a resident or nonresident of the district or of the State.

C. One's domicile is the place where one actually resides with the intent of living there for an indefinite time. Intent is an important

factor although actual residence for a certain period of time is also necessary except for school attendance. Under Pennsylvania law the domicile of a child is with its parents, guardian or relative. There are a few cases, however, where a child may have a school residence or domicile with a stranger, or where it is the intent that the home be permanent.

Section 1402 of the School Laws, See also Act of May 24, 1878, P. L. 131 which provides the method for determining residence where the property is divided by a township line. COMMONWEALTH *ex rel* FYE *v.* BURNSIDE TOWNSHIP SCHOOL DISTRICT, 8 Pa. D. & C. 498; CICCONE *v.* PALMYRA SCHOOL DISTRICT, 3 Pa. D. and C. 62.

D. Excepting as provided by particular sections or provisions of Federal Constitution, states have complete dominion over all persons, property, and business transactions within their borders. The state is not restricted to property tax. That it may tax land and not the crop, the tree and not the fruit, the mine or well but not the product, the business but not the profit derived from it, is wholly inadmissible. SHORT *v.* UPPER MORELAND TOWNSHIP SCHOOL DISTRICT, 117 Pa. Superior Ct. 227. (In re per capita tax.)

VIII ACQUISITION AND USE OF SCHOOL PROPERTY

A. The power of the courts to interfere with boards of school directors in the regular performance of their duties is exceedingly limited, and they are permitted to interfere only where it is made apparent that it is not discretion that is being exercised but arbitrary will or caprice. Relative to unwise action the law will refer it to mistaken judgment, over which it has no supervision. MILLER *v.* SCHOOL DISTRICT OF NORTH VERSAILLES TOWNSHIP, 186 A. 185 123 Pa. Superior Ct. 65. (In re fixing of compensation of tax collector.)

B. However, relative to an abuse of power, the courts will interfere for the protection of the public. RITZMAN *v.* COAL TOWNSHIP SCHOOL DIRECTORS, 317 Pa. 271.

C. A substantial compliance by the contractor is all that is required under the law. It is difficult to define substantial performance. Courts are agreed there is no substantial performance unless the building is such as to fully accomplish the purposes for which it was erected.

D. Where taxpayers, with a full knowledge of the facts, permit an unenforceable building contract to be executed, they may be denied injunctive relief. It is a well-established rule in equity that if a party is guilty of unreasonable delay in the enforcement of his rights, he thereby forfeits his claim to equitable relief.

IX TORT LIABILITY OF SCHOOL DISTRICTS

A. The common law rule is that school districts or municipalities are not liable for injuries sustained by pupils while on school premises. This common law rule applies in all states except New York where boards of education are liable in their corporate capacity for injuries occasioned by their own negligence. The theory is "the king can do no wrong." Since we have no king, the State was assumed to be sovereign. Moreover, immunity from liability has been extended quasi-corporations created by the State for the execution of the State's policies.

CARLO v. SCRANTON SCHOOL DISTRICT 319 Pa. 417.
(New York and Great Britain, contra.)

B. The courts are agreed that education is a function of government and they do not hesitate to apply the rule of non-liability to school districts.

C. The board of school directors may be held liable where school property is used for other than school purposes; in social centers, civic meetings, and the like where invitees are unnecessarily and unreasonably exposed to danger. It is the duty of the board of education to remove defective apparatus or equipment or take some means of notifying the invitees of its dangerous condition and of prohibiting its use.

X PERSONAL LIABILITY OF SCHOOL OFFICERS

A. School officers are not judicial officers, but the performance of most of their duties requires the exercise of judgment and discretion. When such is the case their acts are quasi-judicial and as long as they act honestly and in good faith within their jurisdiction they will not be held liable to an individual for injuries growing out of error of judgment however great it may be.

GERSTNER v. AYERS, 74 Pitts. L. J. 427, held that where school directors failed to keep school grounds in proper condition and a pupil was injured thereby, the directors were not

personally liable. See also, *MENNERT v. ZIEGENFUS*, 23 Northampton 385.

B. The general right and authority of dismissal is vested in the board of school directors and their exercise of it is not an unwarranted act of assumed power, for which liability does not attach.

C. School officers may be held personally liable for *intentional torts* committed while administering the affairs of the district. In a Texas case (*Thompson v. Shifflett*) where board refused to sign contract after an offer and acceptance was made in good faith, court held board members personally liable.

XI EMPLOYMENT OF TEACHERS

A. The board of school directors is charged with the maintenance of the public schools and the employment of teachers therein. It may enact all reasonable rules for the promotion of the efficiency of the schools under its control. Courts, however, in the interest of the public good, would have the power to prohibit the enforcement of any *arbitrary* rule—which is contrary to sound public policy. Section 404 of the Pennsylvania School Code.

B. Contracts must be sufficiently definite to be enforceable. A teacher cannot recover on a contract which has not been reduced to writing or which does not specify the compensation she is to receive. Every provision of school statutes which relates to the subject matter of the contract will be read into the contract by implication.

“The Legislature, in providing by the Act of 1929 the form of contract to be executed by the teacher, expressly recognized its qualified nature by including the proviso that it was subject to the provisions of the Act of 1911 ‘and the amendments thereto.’ And the same provision is in the Act of 1937. The language of these clauses is broad enough to include future amendments as well as those existing at the time the contracts were entered into, and which indicates the intention of the parties to submit their relationship to legislative change. The Act of 1937 is itself subject to amendment.” *TEACHERS’ TENURE ACT CASES*, 329 Pa. 213, 228.

See also 2 Am. and Eng. Ency. of Law, page 15 (Second Edition) wherein it is stated that a contract between a school board and a teacher, in order to support an action for damages for breach of the contract, must be definite and certain as to the amount of compensation to be paid. But though the compensa-

tion is neither fixed by statute nor by contract, the teacher may recover on a quantum meruit for services actually rendered.

C. The courts, as a rule, hold that unless restricted by statute and in the absence of fraud or collusion, a school board may employ superintendents and teachers for a period extending beyond the term of office of all members of the board. In Pennsylvania, however, courts look with disfavor upon usurpation of authority of successors contract for a term longer than its own term of office.

In the case of *PADDEN v. PLAINS TOWNSHIP SCHOOL DISTRICT* 30 Luz. 233 it was held that the statutes establishing and regulating our common school system disclose a general legislative intent to limit the power of a school board to control the obligations of the schools, to such matters as relate either wholly or partially to the administration of school affairs during the particular school year, and within a particular district in and for which the particular board was organized. The court held that where a contract was entered into with a teacher for a year term and prior to the expiration of that contract it was cancelled and the teacher was elected for a further period of three years, that such action on the part of the board was invalid in view of the fact that their terms of office were about to expire. See also *MURRAY v. SCHOOL DISTRICT*, 33 Pa. Superior Ct. 373; *MOORE v. LUZERNE COUNTY*, 262 Pa. 216.

D. The limits, and the only limits, to the exercise of the power of the board of school directors to employ a superintendent and teachers are those fixed by reasonableness and good faith and the statute law of the jurisdiction.

E. The power to employ teachers is very general as to number and as to their assignments, and a written contract, if made in good faith, and without fraudulent collusion, must be held binding. The tenure law makes it impossible to limit the contract of a professional employe to a definite number of months or years. Act of April 6, 1937 P. L. 213.

F. Boards may grant leaves of absence in conformity to provisions of the statutes, and under certain specified conditions must grant sabbatical leaves when applied for. Substitutes for teachers on sabbatical leave may not demand tenure benefits or regularly mandated salaries.

XII DISMISSAL OF EMPLOYES

A. It is well settled that school teachers are not public officers; they are employes. Such rights as they have to compensation grow out of their contractual relationship. If the statutes make no provision for the dismissal of teachers there exists in the employing agency an implied power to dismiss a teacher for good and sufficient cause.

“The Teachers’ Tenure Act does not create a term longer than good behavior, nor does it extend the term of any teacher and even if it did so there would be no conflict with these sections of the Constitution, because school teachers are not public officers. On the other hand, the duties of the school teachers are not defined or created by statute but arise directly from the contract of hiring entered into by them with the school board.”
TEACHERS’ TENURE ACT CASES, 329 Pa. 213, 230.

B. School authorities may dismiss teachers for such causes and in such manner as prescribed by statute. It is a well-established rule, of which teachers should be cognizant, that all pertinent provisions of the statutes are by implication read into contracts of employment.
TEACHERS’ TENURE ACT CASES, *Supra*.

C. Under the common law and under statutes generally, teachers can be dismissed only for cause. Where the statutes expressly state the causes for which teachers may be dismissed, a teacher, as a rule, can be dismissed for no other cause. The assumption is that the enumeration of causes was intended to be exhaustive.

D. A public school teacher is bound to obey all reasonable rules and regulations of the board which employs him, and it makes no difference whether the rules were in force at the date of his employment or were promulgated at a later date.

In an opinion of the Attorney General entitled in *Re Oath of Allegiance* reported in 25 Pa. D and C 8 it was held that “Not only can boards of school directors require their teachers to take the Oath of Allegiance of the United States and administer it to their pupils but it is the duty of such boards to require this manifestation of loyalty to our country. You are further advised that any refusal by a teacher to comply with this requirement, whether such refusal be based upon conscientious or religious scruples, or upon any other reason, should be followed by immediate dismissal.” But see the case of *GOBITIS v. MINERSVILLE SCHOOL DISTRICT*, 21 Fed. Supp. (Pa.) 581 where-

in Judge Maris held that a school board could not expel children for refusal to salute the flag where such refusal was based upon religious objections.

E. All contracts are made in contemplation of the law, and a teacher impliedly consents to obey all reasonable rules which a board may legally make. The board of education of San Francisco adopted a resolution requiring teachers to reside within the city during the term of their employment. The court upheld the resolution as a reasonable exercise of the power of the board of education.

F. Failure to comply with reasonable rules and regulations contemplates dismissal for insubordination and clearly a refusal of a teacher to comply with a reasonable regulation of the board would be such insubordination. In re Oath of Allegiance, *supra*.

G. On the other hand, if a board makes an unreasonable rule in excess of its authority, the teacher is not bound thereby.

H. A rule of the board fixing the teacher's boarding place relates to a matter as to which they were given no authority by existing law. The board's refusal to permit a teacher to continue a school with a different boarding place is unwarranted and the teacher's determination to change boarding places does not authorize the board to terminate the employment of the teacher.

I. When a teacher is dismissed for incompetency, the burden of proof is upon the board of school directors. The law does not require the teacher to show the highest possible qualifications; the law requires only average qualification and ability and the usual application to the discharge of the duties of a teacher to fulfill his contract.

J. Frequent tardiness has been held a justifiable ground for dismissal. Temporary absence from school without sufficient cause likewise constitutes that degree of neglect which justifies a school board in dismissing a teacher.

K. The courts are agreed that a teacher may be dismissed for immorality. In fact, it has been held that mere charges of immorality constitute sufficient cause for dismissal. Good reputation as well as good character, is a necessary qualification of a teacher. If suspicion of vice or immorality be once entertained against a teacher, his influence for good is gone.

Dismissal for immorality is provided for in the Tenure Act. In *Vasbinders Appeal*, 29 Pa. D. and C. 597, dismissal on the

grounds of immorality was upheld where a teacher failed to account for certain funds turned over to him and was guilty of other misconduct.

L. Specifically enumerated causes for which teachers, notwithstanding usual tenure benefits, may be dismissed in Pennsylvania are:

Immorality, incompetency, intemperance, cruelty, wilful and persistent negligence, mental derangement, persistent and wilful violation of the school laws of the Commonwealth.

M. School teachers or superintendents may engage in political activity outside the classroom. However, such zeal in political activity must not carry them to such a degree of offensive partisanship that their usefulness in educational work is impaired or proves a detriment to the school interests affected by their service.

N. The authority of a school board to dismiss a woman teacher who marries during the term of her contract is denied boards in Pennsylvania by the tenure law. The rule seems well established in other states that marriage, in and of itself, does not constitute a legal cause for the dismissal of a woman teacher. Marriage may or may not render a teacher inefficient.

O. If a teacher is incompetent and inefficient after marriage, a dismissal because of marriage is possible and justifiable. If a teacher is neglectful, incompetent, and inefficient, she ought to be discharged whether she is married or whether she is single.

P. Where the statutes vest in the employing agency the right to dismiss employes at discretion and without cause, it is not necessary that the employe be given notice of the charges against him and an opportunity to explain his conduct. If the statute requires that the employe be given notice, the procedure established by statute must be closely followed. Some courts hold that an employe is not entitled to notice and hearing unless such right is expressly conferred by statute.

Q. Pennsylvania Courts have held that the secretary of a board of school directors is not an employe but an officer, and since he is an appointive and not an elective officer, he is, by the terms of the Pennsylvania Constitution, subject to dismissal at the pleasure of the appointing power, without notice or hearing.

XIII RULES AND REGULATIONS OF BOARDS OF EDUCATION

A. It is well established by a great number of cases that school officers may enforce any rule which is reasonable and necessary to promote the best interests of the schools. The courts are very reluctant to declare a board regulation unreasonable.

B. The courts will never substitute their own discretion for that of the school authorities; the enforcement of a rule will never be enjoined because, in the opinion of the court, the rule is unwise or inexpedient; a rule will not be set aside unless it clearly appears to be unreasonable.

C. In case boards of school directors fail to formulate rules and regulations, superintendents, principals, and teachers may make and enforce such reasonable rules and regulations as may be necessary for the administration of the schools.

D. Inasmuch as the teacher stands *in loco parentis*, he may enforce obedience to any reasonable and lawful commands that a parent might enforce.

E. Any rule or regulation which has for its object anything outside the instruction of the pupil or the order requisite for instruction, is beyond the province of the board of education to adopt. For example, the requirement that school children should bring up wood, when not by way of punishment, has nothing to do with the education of the child. It is nothing but manual labor, pure and simple, and has no relation to mental development.

F. The power to determine what constitutes disobedience or misconduct lies with the board of school directors, and in no circumstances, except where fraud, corruption, oppression, or gross injustice is palpably shown, is a court of law authorized to substitute its judgment for that of the board. The power of the board to exercise its honest and reasonable discretion in such cases without the interference of the courts is well settled.

G. School authorities have a right to formulate such necessary rules as, in their judgment, will best promote the public good; for violation, the right to expel offending pupils exists. The question as to the guilt or innocence of the accused cannot be reviewed by the courts unless it appears that such pupil was expelled arbitrarily or maliciously.

H. The courts are in agreement in holding that boards of education may not require pupils to pay for damage to school property where the damage grows out of acts of negligence or carelessness.

I. Carelessness on the part of children is one of the most common, and yet one of the least blameworthy of their faults. But beyond this, a rule is unreasonable which requires of the pupils what they cannot do. The vast majority of pupils have no money at their command with which to pay for damaged school property.

J. The State does not deprive its citizens of their property or their liberty or of any rights, except as a punishment for a crime. Doubtless a child can be expelled from school as a punishment for breach of discipline or for offences against good morals, but *not* for *innocent* acts.

K. Where children are expelled not for innocent acts but because they do not pay the damage sustained, courts hold that school directors have no authority to promulgate or enforce such rules.

L. The rule is well established by many cases that school authorities may govern the conduct of pupils while off the school grounds and out of school hours. A board of school directors may discipline a pupil for any act, no matter where or when committed, provided the act tends **immediately and directly** to destroy the discipline and to impair the efficiency of the school.

M. It is often difficult to distinguish between acts which have an immediate and those which have a remote tendency. Hence, each case must be determined by its peculiar circumstances.

N. If the effects of acts done out of school hours reach within the schoolroom during school hours and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. Truancy is a good example of such a fault committed away from school.

O. Does the wearing of a religious garb by a public school teacher constitute sectarian instruction? The Supreme Court of Pennsylvania held that the wearing of such a garb does not constitute sectarian instruction. The court of Appeals of New York in contrast with the position taken by the Pennsylvania court has held that the wearing of a religious garb while teaching in a public school constitutes sectarian instruction. By the Act of June 27, 1895 P. L. 395, Section 1, Pennsylvania now prohibits teaching in the public schools by a teacher wearing a religious garb.

In the case of COMMONWEALTH v. HERR, 39 Pa. Superior Ct. 454, affirmed in 229 Pa. 122, the Garb Act was held constitutional. In the case of HYSOFG v. GALITZIN BOROUGH SCHOOL DISTRICT, 164 Pa. 629, prior to the enactment of

the Garb Act it was held that the wearing of religious garb did not constitute a violation of the Constitution prohibiting the use of public funds for sectarian purposes. The court intimated that wearing of such garb could be prohibited by the Legislature. See also, Section 2801 of the Pennsylvania School Laws.

XIV DISCIPLINE AND PUNISHMENT OF PUPILS

A. The principle is well established that a board of education may suspend or expel from school any pupil who disobeys a *reasonable* rule of the board. The rule, however, must be reasonable and it must be one within the jurisdiction of the board to make. Whether or not a rule has been violated is ordinarily a matter of fact to be determined by the school authorities, and unless they abuse their discretion and act arbitrarily and unreasonably, a court will not review their findings of fact. Sections 404 and 405 of the School Code.

B. Boards have been sustained in suspending or expelling pupils for violation of the following rules: (1) a rule prohibiting pupils from leaving the school grounds during the noon recess without permission; (2) a rule prohibiting pupils from taking lunch during recess except at the school cafeteria or lunch brought from home; (3) a rule prohibiting the playing of football on the school grounds or under the auspices of the secondary school; (4) a rule prohibiting pupils from attending moving-picture shows except on Friday night and on Saturday; (5) a rule requiring pupils to prepare a rhetorical exercise; (6) a rule requiring all pupils to study music; (7) a rule prohibiting the use of face rouge and cosmetics; (8) a rule providing for expulsion for absence or tardiness without sufficient excuse; (9) a rule requiring pupils to write compositions and to enter into debates; and (10) a rule requiring all pupils to read the Bible in the school.

C. The following rules, on the other hand, have been held to be unreasonable: (1) a rule requiring pupils to pay for school property which they have accidentally or carelessly destroyed; (2) a rule requiring a pupil to bring in firewood; (3) a rule making it obligatory upon a pupil to pursue a particular subject against the wishes of his parents; (4) a rule requiring pupils to remain in their homes and study between seven and nine o'clock in the evening; (5) a rule requiring pupils to participate in social dancing as a part of the curriculum; (6) and a rule prohibiting married persons otherwise eligible from attending school.

D. In a number of other cases, the courts have sustained the authority of school boards to exclude pupils from school for offenses with respect to which no rules existed. The right of a board to expel pupils from school for the following offenses has been upheld: (1) for denouncing the policies of the board of education at a meeting of the student body for the avowed purpose of creating in the minds of the students a spirit of insubordination; (2) for refusing to tell who had written obscene language on the school building; (3) for persistent disobedience to the teacher; (4) for being intoxicated and disorderly on the street on Christmas day; (5) for immoral conduct; (6) for refusing to take a subject because of objection to the method of teaching it; and, (7) for refusing to take a part in commencement exercises. It has been held, moreover, that (8) the school authorities may exclude from school pupils who are mentally or physically defective.

E. The courts all agree that a teacher, to a certain extent, stands in *loco parentis* with respect to corporal punishment of pupils. By the act of sending a child to school, the parent delegates to the teacher authority to discipline the pupil for offenses against the good order and effective conduct of the school. It is not to be understood, however, that a teacher has the same general right to punish for all offenses as does the parent. There are limits, however, beyond which a teacher may not legally go in inflicting corporal punishment. A teacher who transcends these limits may be held liable in either a civil or criminal action. In determining upon what is a reasonable punishment, various considerations must be regarded—the nature of the offense, the apparent motive and disposition of the offender, the influence of his example and conduct upon others, and the sex, age, size, and strength of the pupil to be punished.

In the case of *HARRIS v. GALILLEY*, 125 Pa. Superior Ct. 505 the court quotes with approval the principle stated in 24 Ruling Case Law, 640 as follows: "The law clothes school masters and teachers with a discretionary power in respect to the infliction of corporal punishment to their pupils. But as a general rule, supported by all the authorities, it may be stated that the punishment must be reasonable and confined within bounds of moderation, that is, it must not be cruel or excessive, and the master must not act wantonly or for malice or for passion . . . the instrument must be one suitable and proper for the purpose. It is always a question of fact for the jury to determine from all the attending circumstances whether a punishment inflicted was reasonable and proper or excessive. Where a school

teacher in attempting to enforce the discipline of his school, inflicts a permanent injury and in so doing fails to exercise ordinary care he will be liable if the injury is the natural and proper result of his negligence."

F. It is difficult to draw a precise distinction between legal and illegal corporal punishment. Indeed, there is disagreement among the courts themselves. The line which separates moderate correction from immoderate punishment, can only be ascertained by reference to general principles. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare. It may be laid down as a general rule, that teachers exceed the limits of their authority when they cause lasting mischief; but act within the limits of it, when they inflict temporary pain.

G. There is some disagreement among the courts with respect to the liability of a teacher for the reasonable punishment of a pupil for the violation of an unreasonable rule. In some jurisdictions the teacher is held liable. The better reason, however, supports the view that a teacher should not be held personally liable for mistake in judgment in enforcing unreasonable rules. Where a teacher honestly believes that a rule is reasonable and necessary and employs moderate punishment in its enforcement, he should not be held liable in damages even though a court may regard the rule as unreasonable. In such cases, the teacher, like the board of school directors, exercises a quasi-judicial discretion. The law imposes upon the teacher a duty involving the exercise of discretion and holds the teacher liable if he fails to act honestly and in good faith. But neither reason nor public policy demands that the teacher be held liable for honest mistakes in judgment. It is well established that school board members are not liable for erroneous judgment in matters submitted to their determination, and there seems to be no good reason why the same rule should not apply to teachers. This view is, in fact, supported by judicial authority.

H. It is undoubtedly true that a teacher is liable if, in correcting or disciplining a pupil, he acts maliciously or inflicts a permanent

injury, but he has the authority to correct his pupil when he is disobedient or inattentive to his duties, and any act done in the exercise of this authority and not prompted by malice is not actionable, though it may cause permanent injury, unless a person of ordinary prudence could reasonably foresee that a permanent injury of some kind would naturally or probably result from the act.

I. There is a distinction between the case of an injury inflicted in the performance of a lawful act and one in which the act causing the injury is in itself unlawful or is, at least, a wilful wrong. In the latter case the defendant is liable for any consequence that may flow from his act as the proximate cause thereof, whether he could foresee or anticipate it or not; but when the act is lawful, the liability depends, not upon the particular consequence or result that may flow from it, but upon the ability of a prudent man, in the exercise of ordinary care, to foresee that injury or damage will naturally or probably be the result of his act.

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